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Paper No. 16

In re Application of
BROWN, SUZANNE DAWN
Appl. No.: 09/768,924
Filed: January 24, 2001
Attorney Docket Number: 567-02US

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: **DECISION DISMISSING**
: **PETITION**
: *37 CFR 1.181*
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This is a decision on petitioner's request filed April 28, 2003 to review the holding of abandonment, mailed April 8, 2003. In view of petitioner's statements, the submission is being treated as a petition under 37 CFR 1.181. No fee is required for this petition.

The petition is dismissed.

A review of the file history indicates that a final rejection was mailed on June 27, 2002 setting a shortened statutory period for response of 3 months. Extensions of time were available under 37 CFR 1.136(a); however, in no event may a reply be timely filed after 6 months from the mailing date of the final rejection. Failure to reply within the set or extended period for reply will, by statute, cause the application to become abandoned (35 USC 133). An after-final amendment was timely filed on October 7, 2002 due to a certificate of mailing dated September 27, 2002. The examiner issued an advisory action (mailed October 25, 2002) indicating that the proposed amendment would not be entered because the amendment raises new issues that would require further consideration and/or search. The examiner issued a second advisory action (mailed December 31, 2002) based on the same after-final amendment (received October 7, 2002 with a certificate of mailing dated September 27, 2002). The second advisory action also indicated that the proposed amendment would not be entered. No extensions of time were filed after the final rejection, so the application became abandoned by statute 3 months after the mailing of the final rejection. Even if petitions for extensions of time had been made, the latest a timely response could have been filed was December 27, 2002.

After the application became abandoned by statute, a telephone interview was held. Since there is no mechanism to stay the period for response being the statutory deadline, the statement that the time period for response is March 31, 2003 (over 9 months after the mailing of the final rejection) is clearly an error. The second after-final response filed March 31, 2003 is not timely. The application remains abandoned.

Petitioners may file a renewed petition, without fee, addressing the points raised above. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extensions of time under 37 CFR 1.136(a) are permitted. Petitioner may wish to consider filing a petition to revive under 37 CFR 1.137.



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